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Association of American Physicians and Surgeons, Inc.  
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## Hearing on Health Care Information Technology

**Statement of :**  
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**Association of American Physicians & Surgeons**

**Submitted to:**  
**House Ways & Means Subcommittee on Health**

**July 27, 2005**

Madame Chairman and Members of the Committee:

The Association of American Physicians and Surgeons was founded in 1943 to preserve private medicine. We represent thousands of physicians in all specialties nationwide, and the millions of patients that they serve. I am the executive director, and a practicing internist in Tucson, Arizona.

Nine years ago, President Bill Clinton signed into law the Kennedy-Kassebaum bill, also known as the Health Insurance Portability and Accountability Act of 1996 (HIPAA). It was the end product of three and a half contentious years of White House and Congressional horse-trading. These efforts resulted in new laws that were supposed to make health insurance easier to purchase, with the capability to follow a worker from one job to another, with policies more responsive to the needs of patients, doctors and hospitals. It was also supposed to help 38 million Americans obtain health insurance.

There are now an estimated 45 million uninsured Americans, according to the U.S. Census Bureau and other government sources. Premium increases grew by 8% in 2000, 11% in 2001, 13% in 2002 and 14% in 2003. We now spend an estimated \$480 billion annually on U.S. health care, according to the Robert Wood Johnson Foundation.

We believe that this situation is in large part the unintended consequences of HIPAA.

Additionally, many of the rules of HIPAA continue to erode the quality of health care, add to the cost of medical and administrative services, and undermine the patient-physician relationship.

Rather than making medical care portable and more accountable, HIPAA has apparently laid the foundation for a one-size-fits-nobody national health insurance program. Reliance on the Internet and an interoperable technology system may promise cost-savings to the federal government and certain third-party payers, but it will add enormous, unsupportable costs to private practitioners and small facilities. Moreover, many physicians fear that the establishment of an Internet-based health information infrastructure will enable facilitate, or even lead inexorably to an effective hostile government takeover of American medicine.

One of the objectives of HIPAA is the creation of a mandatory electronic coding, tracking and surveillance system that would use a uniform set of codes for every single medical procedure. Every doctor, hospital and clinic would be required by law to submit these coded procedures so that diseases could be tracked and “quality” could be monitored. Even if proponents deny that a national database would be established, the existence of multiple, interoperable databases would be its functional equivalent. In other words, everyone’s personal medical history, including the most sensitive and intimate records, would be accessible on the “worldwide web” to persons unknown to the patients, with unpredictable and potentially devastating effects.

Back in 1996, when the “Information Superhighway” began electronically linking all of humankind, it was paved with fiber optics that led to high-speed modems. There were no visible potholes, viruses or worms, and just a few annoying pop-ups. The Internet looked like the answer to our dreams of a modern world, but it has become a dangerous place for storing personal records of any kind.

One only needs to consult the Congressional Record of June 23, 2004 to better understand the intent and scope of medical information technology: Upon introduction of his Health Care Modernization, Cost Reduction and Quality Improvement Act of 2004, legislation (S.2421, 108th U.S. Congress) amending HIPAA and the Public Health Service Act, Sen. Edward Kennedy explained his vision for medical information technology:

“The legislation we are introducing is an effective way to modernize and improve the health care system, by using modern information technology, by paying for **value and results** [emphasis added] and not simply for procedures performed or patients admitted to hospitals, and focusing in improving quality and preventing disease,” Kennedy explained to his colleagues.

In one paragraph, Kennedy proposed that what was supposed to be a way to help seniors pay their medical bills into a command-and-control economy directed from Washington. His assumption that government knows enough to define “value and results” and should have the authority to deny payment for services rendered in good faith illustrates immense chasm of understanding of American health that currently exists between the U.S. Senate and the

practitioners of modern medicine.

The government takeover begins with so-called Pay-for-Performance (Pay-for-Conformance really) within the Medicare program. Doctors would not be allowed to participate in Medicare unless they met all the information technology requirements proscribed by the U.S. Congress.

But that is just the camel's nose! Even if in compliance with the electronic requirements, doctors would only be paid for what bureaucrats decide should be done, under what circumstances, for whom, and with what results – in other words only for care that follows government “guidelines.” (These will be “voluntary,” so physicians will be responsible for any untoward consequences, but any “deviation” will have to be justified or punished.) If paid only for “successful” outcomes, physicians who desired to remain financially solvent might be forced to restrict their practice to patients with a relatively good prognosis, who are inclined to follow doctor's orders.

Under the guise of streamlining the practice of medicine by discouraging any procedures that computers might be able to identify as defensive medicine, Pay-for-Performance becomes an obstacle to medicine tailored to the needs of individual patients by focusing only on pre-approved procedures for specific treatments and illnesses.

The electronic surveillance of medicine would make it that much easier for trial lawyers to sue doctors, and doctors who would no longer be paid for defensive medical practices. Under Kennedy's proposal, doctors would not be paid for anything but results. Stated simply, this would impose a standard on the medical profession that cannot be met, as there are no guarantees in medicine. Only physicians who treat patients in good faith to the best of their ability.

If the House Ways & Means Committee and the U.S. Congress intend to reduce medical costs, increase quality, and eliminate needless tests and administrative overhead, a good first step would be to complete work on long-overdue and badly needed caps on monetary awards for “pain and suffering,” limits on contingency fees that lawyers charge, and penalties for filing unfounded lawsuits.

Instead, the federal government may require use of the Internet to expose private medical records, monitor medical procedures, and dictate the day-to-day operations of doctors' offices, hospitals, and pharmacies.

The government-dictated medical information technology movement and the intrusive, restrictive central planning in American medicine that it would foster would render the practice of modern medicine as we know it today virtually impossible. The quality and privacy of medical care would suffer, as well as availability, because many excellent practitioners are likely to become demoralized and withdraw from active practice as soon as possible, unwilling to perform under constant surveillance by bureaucrats. Advancements in medical technology and groundbreaking treatments for disease would become nonexistent, because the federal government would control all financial incentives for medical research and development.

As the members of this Committee debate the broader issues of medical information technology, and the potential for cost-savings for government programs like Medicare and Medicaid, please keep foremost in your mind the need to protect the sacred relationship between physicians and their patients. In this 109th U.S. Congress, doctors and their patients are facing a deluge of punitive and doctrinaire regulatory proposals including the failure to reform medical liability laws, moratoriums on physician financial interest in specialty hospitals, information technology requirements for physicians participating in Medicare, and now the proposed assault on the actual practice of medicine – pay-for-performance.

The Association of American Physicians and Surgeons is urging restraint, reflection and reassessment of the use of relatively novel information technology and its relationship with government programs and federal and state spending on health care. Forcing technology on medicine by top-down central planning risks an end to advancements in information technology, as outmoded, inappropriate, cumbersome systems are imposed. Physicians and medical facilities will voluntarily adopt technology as they find it serves their patients well, just as they have been quick to use new imaging technology, surgical procedures, and medications.

Please do all you can to roll back destructive federal interference in medicine, so that those with actual knowledge of medicine and of their patients can do their jobs efficiently, economically, and privately. At least, stop adding new burdens to a system already overloaded by counterproductive regulation.

Thank you.